

HOUSE BILL No. 1842

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-1-16; IC 7.1-1-2-2; IC 7.1-2-3-9.1; IC 7.1-3; IC 7.1-4-7; IC 24-3-5.

Synopsis: Tobacco product manufacturer regulation. Requires a tobacco product manufacturer to: (1) certify that it is a participating manufacturer in the tobacco master settlement agreement or maintains a qualified escrow fund; (2) list the manufacturer's brand families of cigarettes; and (3) obtain a manufacturer's permit from the alcohol and tobacco commission. Requires the attorney general to electronically publish a directory of tobacco product manufacturers and brand families. Requires a foreign nonparticipating manufacturer to appoint an agent for service of process. Provides that the department of state revenue may: (1) revoke or suspend the license of; and (2) impose a civil penalty on; a distributor or stamping agent that affixes a stamp on or sells cigarettes of a manufacturer or brand family that is not listed in the directory. Allows the state to recover the costs of an action to enforce the certification requirements. Imposes a \$5,000 annual fee for a tobacco product manufacturer's permit. Deposits cigarette manufacturer's permit fees into the enforcement and administration fund.

Effective: July 1, 2003.

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January 23, 2003, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1842

A BILL FOR AN ACT to amend the Indiana Code concerning alcoholic beverages and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-7-1-16 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2003]: Sec. 16. (a) Each distributor shall obtain
3 from the department a registration certificate. Application for a
4 registration certificate shall be made in writing upon forms prescribed
5 by the department and shall be signed and verified by the distributor.
6 (b) The registration certificate shall be issued only upon payment to
7 the department of an annual fee of five hundred dollars (\$500) which
8 shall accompany the application for the registration certificate. In
9 addition, a distributor must concurrently file a bond or a letter of credit:
10 (1) in a form and with a surety or financial institution approved by
11 the department;
12 (2) in the amount of one thousand dollars (\$1,000);
13 (3) naming the state as obligee; and
14 (4) conditioned upon the payment of taxes, damages, fines,
15 penalties, or costs adjudged against the holder of the registration
16 certificate by reason of the violation of any of the provisions of
17 this chapter.



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(c) All registration certificates shall be personal, nontransferable, and valid for one (1) year from date of issuance unless revoked or suspended for cause by the department.

(d) If business is transacted at two (2) or more places by one (1) distributor, a separate registration certificate shall be required for each place of business where he operates as a distributor (as defined by section 6 of this chapter).

(e) Each certificate shall:

(1) be numbered;

(2) show the name and address of the distributor; and

(3) be posted in a conspicuous place at the place of business for which it is issued.

(f) Any person who changes his or her place of business shall return his or her certificate and the department shall issue a new certificate for the new place of business free of charge.

(g) Any certificate issued under this section may be surrendered to the department at any time prior to its expiration, and the department shall refund an amount of money which bears the same proportion to the fee originally paid therefor as the unexpired period of the permit bears to one (1) year. However, no refund shall be allowed in the event that a certificate is revoked as provided in this chapter, and no refund shall be made in excess of four hundred dollars (\$400).

(h) The department shall not issue a certificate under this section to a distributor unless the distributor certifies in writing that the distributor will comply with the requirements of IC 24-3-5.

SECTION 2. IC 7.1-1-2-2, AS AMENDED BY P.L.213-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. Except as provided in IC 7.1-5-1-3, ~~and~~ IC 7.1-5-1-6, **and IC 7.1-3-25**, this title applies to the commercial manufacturing, bottling, selling, bartering, importing, transporting, delivering, furnishing, or possessing of alcohol, alcoholic beverages, industrial alcohol, malt, malt syrup, malt extract, liquid malt or wort.

SECTION 3. IC 7.1-2-3-9.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9.1. (a) The commission shall prepare and maintain, available for public inspection, a registry of all retailer, ~~and~~ dealer, **and tobacco product manufacturer** permits (including supplemental permits) issued by it, categorized by type of permit and by the type of establishment to which it is issued. The registry of permits shall **as applicable**:

(1) be subdivided on a county by county basis, and further subdivided by city, town, and unincorporated area;

(2) contain the number of permits authorized by the quota, and the

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number of permits currently issued;

(3) contain the name of the owner of the permit, the address of the licensed premises, the assumed business name under which the business is conducted, and, if a corporation, the names of the president and secretary; and

(4) be made current annually, to indicate by specific notation any new permits that were issued or any existing permits that were transferred in any manner within the prior year.

(b) The commission shall distribute one (1) complete copy of the registry of permits for that particular county to each county clerk, at no cost to the county clerk, each time the registry is made current. The county clerk shall immediately notify the county treasurer that the registry has been received and make the registry available for copying by the county treasurer. Each county clerk shall maintain a copy of the registry of permits available for public inspection in the county clerk's office during normal business hours.

(c) The commission shall provide for the sale of the registry of permits to the public on a cost basis, both as a complete statewide registry and as a countywide registry.

SECTION 4. IC 7.1-3-1-5.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5.3. (a) **Except as provided in subsection (e)**, this section applies to an application for a new permit, renewal of a permit, or transfer of a permit authorized by this article for a location in a:

(1) second or third class city; or

(2) county other than a county containing a consolidated city.

(b) As used in this section, "plan commission" has the meaning set forth in IC 36-7-1-14.

(c) A director of a plan commission may request the commission to notify the plan commission that the commission has received an application for a permit for a location within the territory where the plan commission has jurisdiction.

(d) If the commission receives a request under subsection (c), the commission shall provide to the appropriate plan commission a copy of the notice that the commission submits for publication to meet the requirements of section 5 of this chapter. The commission shall mail the copy to the plan commission no later than the day that the commission submits the notice for publication.

(e) This section does not apply to an application under IC 7.1-3-25.

SECTION 5. IC 7.1-3-1-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 21. (a) **This section**

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1 does not apply to a permit issued under IC 7.1-3-25.

2 (b) The holder of a permit of any type issued under the provisions
3 of this title or a manufacturer of an alcoholic beverage may sponsor,
4 finance, or promote in any way an amateur athletic contest, amateur
5 athletic team, or amateur athletic sporting event of any kind.

6 SECTION 6. IC 7.1-3-25 IS ADDED TO THE INDIANA CODE
7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2003]:

9 **Chapter 25. Tobacco Product Manufacturer's Permits**

10 **Sec. 1.** As used in this chapter, "applicant" means a
11 manufacturer that applies for a tobacco product manufacturer's
12 permit under this chapter. For purposes of section 7 of this
13 chapter, the term includes any combination of persons who own,
14 directly or indirectly, more than ten percent (10%) of the
15 ownership interests in the applicant.

16 **Sec. 2.** As used in this chapter, "cigarette" has the meaning set
17 forth in IC 24-3-3-5.

18 **Sec. 3.** As used in this chapter, "manufacturer" means a tobacco
19 product manufacturer (as defined in IC 24-3-3-10).

20 **Sec. 4.** As used in this chapter, "participating manufacturer"
21 has the meaning set forth in IC 24-3-3-12(1).

22 **Sec. 5. (a)** Before a manufacturer may:

23 (1) manufacture cigarettes; or

24 (2) sell or deliver cigarettes to a person;

25 in Indiana, the manufacturer shall obtain from the commission a
26 tobacco product manufacturer's permit.

27 (b) A manufacturer shall submit an application for a tobacco
28 product manufacturer's permit on a form prescribed by the
29 commission.

30 (c) An application form must require the following information:

31 (1) The applicant's name and address.

32 (2) The address of the applicant's principal place of business.

33 (3) The address of each place of business at which the
34 applicant conducts business.

35 (4) Any other information the commission requires.

36 (d) This subsection applies to an applicant that is a firm, a
37 partnership, or an association. An application form under
38 subsection (c) must require the name and address of each member
39 of the firm, partnership, or association.

40 (e) This subsection applies to an applicant that is a corporation.
41 An application form under subsection (c) must require the name
42 and address of each officer of the corporation.

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1 **Sec. 6. (a) The commission may issue a tobacco product**
 2 **manufacturer's permit under this chapter only upon payment by**
 3 **the manufacturer to the commission of an annual fee of five**
 4 **thousand dollars (\$5,000).**

5 **(b) A tobacco product manufacturer's permit issued under this**
 6 **chapter is nontransferable and valid for one (1) year from date of**
 7 **issuance unless revoked or suspended for cause by the commission.**

8 **(c) Each tobacco product manufacturer's permit shall:**

9 **(1) be numbered;**

10 **(2) show the name and address of the manufacturer; and**

11 **(3) be posted in a conspicuous place at the place of business**
 12 **for which it is issued.**

13 **Sec. 7. The commission may not issue a tobacco product**
 14 **manufacturer's permit under this chapter to an applicant to whom**
 15 **any of the following conditions apply:**

16 **(1) The applicant owes at least five hundred dollars (\$500) in**
 17 **delinquent cigarette taxes under IC 6-7.**

18 **(2) The applicant had a tobacco product manufacturer's**
 19 **permit revoked by the commission in the immediately**
 20 **preceding two (2) years.**

21 **(3) The applicant had a registration certificate under IC 6-7-1**
 22 **revoked by the department of state revenue in the**
 23 **immediately preceding two (2) years.**

24 **(4) The applicant has been convicted of a crime relating to**
 25 **cigarettes, including:**

26 **(A) selling stolen or counterfeit cigarettes;**

27 **(B) receiving stolen cigarettes; or**

28 **(C) involvement in the smuggling or counterfeiting of**
 29 **cigarettes.**

30 **(5) The applicant has been convicted of a felony.**

31 **(6) The applicant is neither:**

32 **(A) a participating manufacturer; nor**

33 **(B) in full compliance with IC 24-3-3-12(2).**

34 **(7) A cigarette imported by the applicant is imported in**
 35 **violation of 19 U.S.C. 1681a.**

36 **(8) A cigarette imported or manufactured by the applicant**
 37 **does not fully comply with the federal Cigarette Labeling and**
 38 **Advertising Act.**

39 **Sec. 8. (a) The commission may revoke or suspend a tobacco**
 40 **product manufacturer's permit under this section upon a finding**
 41 **that the manufacturer has violated a provision of this chapter.**

42 **(b) This section applies in addition to any civil or criminal**

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penalty.

Sec. 9. The commission shall deposit fees collected under this chapter into the enforcement and administration fund established by IC 7.1-4-10-1.

Sec. 10. The commission shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 7. IC 7.1-4-7-1, AS AMENDED BY P.L.235-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. ~~Collection of Annual License Fees.~~ The chairman shall collect the required annual license fee paid in connection with the issuance of **a tobacco product manufacturer's permit**, a brewer's permit, a beer wholesaler's permit, a temporary beer permit, a dining car permit of any type, a boat permit of any type, a distiller's permit, a rectifier's permit, a liquor wholesaler's permit, a vintner's permit, a farm winery permit, a farm winery brandy distiller's permit, a wine wholesaler's permit, a wine bottler's permit, a temporary wine permit, a salesman's permit, and a carrier's alcoholic permit.

SECTION 8. IC 7.1-4-7-4, AS AMENDED BY P.L.204-2001, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Except as provided in subsection (b), the chairman and the department shall deposit the money collected under sections 1, 2, and 3 of this chapter daily with the treasurer of state, and not later than the fifth day of the following month shall cover them into the general fund of state for general fund purposes.

(b) The chairman and the department shall deposit the money collected under IC 7.1-2-5-3, IC 7.1-2-5-8, IC 7.1-3-17.5, IC 7.1-3-17.7, IC 7.1-3-22-9, **IC 7.1-3-25-6**, and IC 7.1-4-4.1-5 daily with the treasurer of state, and not later than the fifth day of the following month shall cover them into the enforcement and administration fund established under IC 7.1-4-10-1.

SECTION 9. IC 24-3-5 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 5. Master Settlement Agreement Protection Act

Sec. 1. As used in this chapter, "brand family" means cigarettes that are:

- (1) sold under the same trademark; and**
- (2) differentiated from one another by means of modifiers such as menthol, lights, kings, or 100s.**

The term includes the use of a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indicia of product identification that is identical or similar to

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or identifiable with a previously known brand of cigarettes.

Sec. 2. As used in this chapter, "cigarette" has the meaning set forth in IC 24-3-3-5.

Sec. 3. As used in this chapter, "department" means the department of state revenue.

Sec. 4. As used in this chapter, "distributor" means a person that:

(1) purchases cigarettes on which the tax under IC 6-7-1 is not paid; and

(2) stores, sells, or otherwise disposes of the cigarettes.

Sec. 5. As used in this chapter, "master settlement agreement" has the meaning set forth in IC 24-3-3-6.

Sec. 6. As used in this chapter, "nonparticipating manufacturer" means a tobacco product manufacturer that is not a participating manufacturer.

Sec. 7. As used in this chapter, "participating manufacturer" has the meaning set forth in IC 24-3-3-12(1).

Sec. 8. As used in this chapter, "qualified escrow fund" has the meaning set forth in IC 24-3-3-7.

Sec. 9. As used in this chapter, "stamping agent" means a person that may affix a stamp to a package of cigarettes under IC 6-7-1-15.

Sec. 10. As used in this chapter, "tobacco product manufacturer" has the meaning set forth in IC 24-3-3-10.

Sec. 11. As used in this chapter, "units sold" has the meaning set forth in IC 24-3-3-11.

Sec. 12. (a) Not later than April 30 of each year, a tobacco product manufacturer whose cigarettes are sold in Indiana shall certify to the department and the attorney general that, as of the date of the certification, the tobacco product manufacturer is:

(1) a participating manufacturer; or

(2) in full compliance with IC 24-3-3.

The department shall prescribe the form of the certification.

(b) A participating manufacturer shall include in a certification under subsection (a) a list of the participating manufacturer's brand families. The participating manufacturer shall update the list by filing a supplemental certification with the department and the attorney general not less than thirty (30) days before the participating manufacturer adds a brand family or otherwise modifies the list of brand families.

(c) A nonparticipating manufacturer shall include in a certification under subsection (a) a list of the nonparticipating



manufacturer's brand families, including the following:

(1) A separate listing of each brand family that the nonparticipating manufacturer sold in Indiana during the calendar year before the year in which the certification is filed.

(2) A separate listing of the number of units sold for each brand family that the nonparticipating manufacturer sold in Indiana during the calendar year before the year in which the certification is filed.

(3) An indication of any brand family that the nonparticipating manufacturer sold in Indiana during the calendar year before the year in which the certification is filed that is not sold in Indiana as of the date of the certification.

(4) The name and address of any other manufacturer of a brand family that the nonparticipating manufacturer sold in Indiana during the calendar year before the year in which the certification is filed.

(d) A nonparticipating manufacturer shall file a supplemental certification with the department and the attorney general not less than thirty (30) days before the nonparticipating manufacturer adds to or otherwise modifies its list of brand families.

(e) A nonparticipating manufacturer shall certify the following in a certification under subsection (a):

(1) The nonparticipating manufacturer:

(A) is registered to do business in Indiana; or

(B) has appointed an agent for service of process and provided notice under section 15 of this chapter.

(2) The nonparticipating manufacturer has:

(A) established and continues to maintain a qualified escrow fund; and

(B) executed a qualified escrow agreement that:

(i) the attorney general has approved; and

(ii) governs the qualified escrow fund.

(3) The nonparticipating manufacturer is in full compliance with:

(A) this section; and

(B) IC 24-3-3.

(4) The name, address, and telephone number of the financial institution that holds the nonparticipating manufacturer's qualified escrow fund.

(5) The account number and any subaccount numbers of the nonparticipating manufacturer's qualified escrow fund.

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(6) The amounts and dates of deposits that the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in Indiana during the calendar year before the year in which the certification is filed, including any verification required by the department or the attorney general.

(7) The amounts and dates of withdrawals or transfers of funds that the nonparticipating manufacturer made from a qualified escrow fund into which the nonparticipating manufacturer made or makes escrow payments under IC 24-3-3.

(f) A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer's certification under subsection (a) unless:

(1) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is considered the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the master settlement agreement for the year in which the certification is filed in the volume and shares determined under the master settlement agreement; or

(2) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is considered to be the nonparticipating manufacturer's cigarettes for purposes of IC 24-3-3-12(2).

(g) This section does not limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of IC 24-3-3.

(h) A tobacco product manufacturer shall maintain all invoices and documentation of sales and any other relevant information for a period of five (5) years unless otherwise required by law to maintain the invoices, documentation of sales, or other relevant information for more than five (5) years.

Sec. 13. (a) Not later than July 1 of each year, the attorney general shall make available to the public by publishing on accessIndiana (as defined in IC 5-21-1-1.5) a directory listing:

(1) all tobacco product manufacturers that have complied with section 12 of this chapter; and

(2) all brand families listed in certifications filed under section 12 of this chapter.

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(b) A directory described in subsection (a) shall not include the name or brand families of a nonparticipating manufacturer:

- (1) that fails to comply with section 12 of this chapter; or
- (2) whose certification fails to comply with section 12(c) or 12(e) of this chapter, unless the attorney general determines that the failure has been remedied.

(c) The directory may not include a tobacco product manufacturer or a brand family if the attorney general concludes that:

- (1) in the case of a nonparticipating manufacturer, all escrow payments required under IC 24-3-3-12 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or
- (2) all outstanding final judgments, including interest on the judgments, for violations of IC 24-3-3 have not been fully satisfied for the tobacco product manufacturer or brand family.

(d) The attorney general shall update the directory as necessary to correct mistakes or to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

(e) A distributor or stamping agent shall provide and update as necessary an electronic mail address to the attorney general for purposes of receiving a notification required by this chapter.

Sec. 14. A person may not:

- (1) affix a stamp to a package or other container of cigarettes; or
- (2) sell or offer or possess for sale in Indiana cigarettes;

of a tobacco product manufacturer or brand family that is not listed in a directory under section 13 of this chapter.

Sec. 15. (a) A foreign nonparticipating manufacturer that has not registered to do business in Indiana shall, as a condition precedent to having the foreign nonparticipating manufacturer's brand families listed in a directory under section 13 of this chapter, appoint and engage without interruption the services of an agent in the state to act as the foreign nonparticipating manufacturer's agent for the service of process. Service on an agent under this section constitutes legal and valid service of process on the foreign nonparticipating manufacturer that appointed and engaged the services of the agent. The foreign nonparticipating manufacturer

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1 shall provide the following information to the department and the
2 attorney general:

- 3 (1) The name, address, and telephone number of the agent.
- 4 (2) Proof of the appointment of the agent.
- 5 (3) The availability of the agent.
- 6 (4) Any other information required by the department or the
7 attorney general.

8 (b) A foreign nonparticipating manufacturer shall provide
9 notice to the department and the attorney general not less than
10 thirty (30) days before the foreign nonparticipating manufacturer
11 terminates the authority of an agent appointed under this section.
12 The foreign nonparticipating manufacture shall provide proof to
13 the satisfaction of the attorney general of the appointment of a new
14 agent not less than five (5) days before the foreign nonparticipating
15 manufacturer terminates an existing agency appointment.

16 (c) If an agent terminates an agency appointment, the foreign
17 nonparticipating manufacturer shall:

- 18 (1) notify the department and the attorney general of the
19 termination not more than five (5) days after the termination;
20 and
- 21 (2) provide proof to the satisfaction of the attorney general of
22 the appointment of a new agent.

23 (d) A foreign nonparticipating manufacturer that:

- 24 (1) sells products in Indiana; and
- 25 (2) has not appointed an agent under this section;

26 is deemed to have appointed the secretary of state as the foreign
27 nonparticipating manufacturer's agent. The appointment of the
28 secretary of state under this subsection as the foreign
29 nonparticipating manufacturer's agent does not satisfy the
30 condition precedent to having the foreign nonparticipating
31 manufacturer's brand families listed in a directory under section
32 13 of this chapter.

33 Sec. 16. (a) This section applies after July 31, 2003.

34 (b) Not later than January 20, April 20, July 20, and October 20
35 of a calendar year, a distributor or stamping agent shall submit the
36 following information to the department and the attorney general:

- 37 (1) A list by brand family of the total number of cigarettes for
38 which the distributor or stamping agent affixed stamps or
39 otherwise paid taxes during the immediately preceding three
40 (3) months.
- 41 (2) Any other information required by the department or the
42 attorney general.

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1 The distributor or stamping agent shall maintain and make
 2 available to the department and the attorney general for a period
 3 of five (5) years all invoices and documentation of sales of all
 4 nonparticipating manufacturer cigarettes and any other
 5 information that the distributor or stamping agent relied on in
 6 reporting to the department and the attorney general.

7 (c) The attorney general may require a distributor or a tobacco
 8 product manufacturer to submit additional information to
 9 determine whether a tobacco product manufacturer is in
 10 compliance with this chapter. The additional information may
 11 include samples of the packaging or labeling of each of the tobacco
 12 product manufacturer's brand families.

13 Sec. 17. The department shall disclose to the attorney general
 14 any information received under this chapter and requested by the
 15 attorney general for purposes of determining compliance with and
 16 enforcing this chapter. The department and the attorney general:

17 (1) shall share with each other the information received under
 18 this chapter; and

19 (2) may share the information received under this chapter
 20 with other federal, state, or local agencies only for purposes
 21 of enforcing this chapter or a corresponding law in another
 22 state.

23 Sec. 18. The attorney general may require a nonparticipating
 24 manufacturer to provide from the financial institution that holds
 25 the nonparticipating manufacturer's qualified escrow fund for
 26 purposes of complying with this chapter proof of:

27 (1) the amount of money in the qualified escrow fund being
 28 held on behalf of the state;

29 (2) the dates of any deposits into the qualified escrow fund;
 30 and

31 (3) the dates and amounts of any withdrawals from the
 32 qualified escrow fund.

33 Sec. 19. The department or the attorney general may adopt
 34 rules under IC 4-22-2 to implement this chapter, including rules to:

35 (1) require a tobacco product manufacturer subject to section
 36 12(c) of this chapter to make required escrow deposits in
 37 installments during the calendar year in which the sales
 38 covered by the deposits are made; or

39 (2) produce information sufficient to enable the attorney
 40 general to determine the adequacy of the amount of an
 41 installment deposit described in subdivision (1).

42 Sec. 20. (a) This section applies in addition to or instead of any

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1 other civil or criminal penalty.

2 (b) The department may revoke or suspend the license of a
3 distributor, a stamping agent, or any other person that violates
4 section 14 of this chapter.

5 (c) Each:

6 (1) stamp affixed;

7 (2) sale of cigarettes; or

8 (3) offer or possession of cigarettes for sale;

9 in violation of section 14 of this chapter constitutes a separate
10 violation.

11 (d) The department may impose a civil penalty that does not
12 exceed the greater of:

13 (1) five hundred percent (500%) of the retail value of the
14 cigarettes sold; or

15 (2) five thousand dollars (\$5,000);

16 for each violation of section 14 of this chapter.

17 Sec. 21. Whenever the department discovers any cigarettes that
18 have been sold, offered for sale, or possessed for sale in Indiana in
19 violation of section 14 of this chapter, the department may seize
20 and take possession of the cigarettes. The seized cigarettes shall be
21 forfeited to the state. The department shall destroy the seized
22 cigarettes.

23 Sec. 22. The attorney general may seek an injunction to:

24 (1) restrain a threatened or actual violation of section 14,
25 section 16(b), or section 16(c) of this chapter by a stamping
26 agent; and

27 (2) compel the stamping agent to comply with section 14,
28 section 16(b), and section 16(c) of this chapter.

29 Sec. 23. (a) A person shall not:

30 (1) sell or distribute; or

31 (2) acquire, hold, own, possess, transport, import, or cause to
32 be imported;

33 cigarettes that the person knows or should know are intended for
34 distribution or sale in Indiana in violation of section 14 of this
35 chapter.

36 (b) A person who violates this section commits a Class C
37 misdemeanor.

38 Sec. 24. A person who violates section 14 of this chapter engages
39 in an unfair and deceptive business practice.

40 Sec. 25. A determination by the attorney general to not list in or
41 to remove from a directory under section 13 of this chapter a
42 brand family or a tobacco product manufacturer is subject to



1 review by the Marion County circuit court.

2 Sec. 26. The department shall not issue a registration certificate
3 under IC 6-7-1-16 to a distributor unless the distributor certifies in
4 writing that the distributor will comply with this chapter.

5 Sec. 27. In an action brought by the state to enforce this chapter,
6 the state may recover:

- 7 (1) the costs of investigation;
8 (2) expert witness fees;
9 (3) the costs of the action; and
10 (4) attorney's fees.

11 Sec. 28. If a court determines that a person has violated this
12 chapter, the court shall order any profits, gain, gross receipts, or
13 other benefit from the violation to be disgorged and paid to the
14 treasurer of state for deposit in the Indiana tobacco master
15 settlement agreement fund under IC 4-12-1-14.3.

16 SECTION 10. [EFFECTIVE JULY 1, 2003] (a) Notwithstanding
17 IC 24-3-5-12(a), as added by this act, a tobacco manufacturer shall
18 file a certification under IC 24-3-5-12, as added by this act, not
19 later than August 15, 2003.

20 (b) Notwithstanding IC 24-3-5-13(a), as added by this act, the
21 attorney general shall publish a directory under IC 24-3-5-13 not
22 later than October 1, 2003.

23 (c) This SECTION expires December 31, 2003.

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